

**COMMITTEE ON RULES OF PROCEDURE  
IN DOMESTIC RELATIONS CASES**

Friday, September 10, 2004 10:00 am – 3:00 pm

Arizona Courts Building

1501 W. Washington, Conference Room 345

Teleconference #: (602) 542-9006

Web Site: <http://www.supreme.state.az.us/drrc/>

**Members Present:**

Hon. Mark Armstrong

Hon. Norm Davis

Annette Everlove, Esq.

Bridget Humphrey, Esq.

Janet Metcalf, Esq.

Hon. John Nelson (telephonically)

Hon. Dale Nielson

Richard Scholz, Esq.

Hon. Nanette Warner

Dr. Brian Yee

**Members Not Present:**

Annette Burns, Esq.

Elaine Fridlund-Horne, Esq.

Phil Knox, Esq.

**Staff Present:**

Konnie Neal

Theresa Barrett

Isabel Gillett

**Members Represented by Proxy:**

Janet Sell, Esq. for Debra Tanner, Esq.

Valerie Sheedy, Esq. for Robert Schwartz, Esq.

Lauri Thomas for Hon. Michael Jeanes

**Quorum:**

Yes

## 1. Call to Order: Hon. Mark Armstrong

After welcoming Committee members and determining a quorum, Judge Armstrong reviewed the new materials contained in the meeting packet:

- Membership List
- Workgroup List
- Workgroup Contact Information List
- “Save the Date” Notice for Arizona’s AFCC Annual Conference in Sedona
- Administrative Order No. 2004-81, Extending Time to Enter Final Report and Committee Members’ Terms
- Calendar from 9/2004-12/2005 listing the Committee on Rules of Procedure in Domestic Relations Cases Meeting Dates and Other Meeting Dates Relative to the Committee’s Work
- Updated Master *Arizona Rules of Family Law Procedure (ARFLP)*
- Statement of Arrearage Draft provided by Judge Davis
- Memorandum from Judge Davis’ Workgroup 9 Regarding Post-Decree Rules
- Judgments Section Draft provided by Phil Knox
- Minutes from August 6, 2004: Judge Armstrong asked for a motion to approve the minutes at this time.

**Motion: Minutes Approved.  
Seconded**

**Vote: Minutes Approved.**

Judge Armstrong stated the plan is to be finished drafting the *ARFLP* by March, 2005, and he hoped the Committee would not need to meet monthly after March. However, the Committee will need to process and consider the public comments.

The members received a binder with the revised master *ARLFP*, which was broken into sections. Konnie explained that this will make it necessary to copy and replace only the sections that have corrections and need to be updated for the following month’s meeting. There will be a new Judgments Section next month, and Judge Armstrong asked the members to take the Judgments Section draft with them for their review, as it will be discussed at the October meeting.

## 2. Reports from Workgroups

### a. Workgroup 9: Post Judgment Proceedings (Judge Davis, Chair)

Judge Davis explained this is a draft, and he would be discussing concepts only. He said the idea is that when a petition is filed, the parties should have all the information together that will be needed to proceed.

Judge Davis stated that he believes that the Division of Child Support Enforcement (DCSE) has committed to creating a web-based arrearage calculator for child support in the next year, and by the time the *ARFLP* becomes effective, there should be a printout of a current calculation of principle and interest that could be attached to a petition. He thought perhaps the petition should be filed with the Clearing House, and then the court's focus would be on credits, equitable remedies, etc. The workgroup decided that these should be based on the Order to Appear method. They want to leave some flexibility in order for each county to handle this however they choose.

The workgroup considered whether or not to require a Response, and if so, whether the Response required should be as specific as the Petition. Judge Davis posed if a party opposes a Child Support Modification, should that party then have to submit a worksheet and other specific details? If a party opposes an arrearage calculation, would that party then have to submit a detailed Response as to why they disagree, so that the court can focus on the issue early in order to get the parties out of the system earlier?

The workgroup suggested that parties be required to meet and confer or to mediate the dispute before filing a Petition to Modify a Custody or Parenting Time Order, similar to the Resolution Management Conference that was discussed in regard to pre-decree. The workgroup agreed that if there are requirements for mediation or meet and confer, there should also be exceptions.

The workgroup also suggested that the court should be able to appoint Family Court Masters. Judge Davis said there should also be a summary dismissal of all petitions that would not result in a modification in the amount of at least 15%.

They talked about defining what is post-decree and what is not. The workgroup also suggested a Statement of Arrearage form (which Judge Davis had supplied for the meeting). However, if the parties can do the Clearing House printout, none of this may be necessary.

Judge Armstrong asked the members' opinion on the issue of a Response to the Petition. He stated that at present in Maricopa County, it is within the judges' purview; there is a check box on the Order to Appear which the judge can check whether a Response is necessary or not, and when it is due. He said he does not require a Response very often. Judge Davis added that case law says none is required by law.

Discussion ensued. Judge Warner stated that this has not been a problem in Pima County. Janet Sell from the Attorney General's office was concerned about one party getting reliable information from the other party. Judge Armstrong recommended that the Order to Appear should be tailored to include the information needed for the next event.

The Custody and Parenting Time Response was discussed. The consensus was that there should also be a Response for parenting time and custody with the penalties built into the Response in cases of non-compliance.

There was more discussion regarding a meet and confer requirement before filing. Judge Armstrong stated that aspiration-like language is useful, and asked Judge Davis to work on a non-mandatory/aspiration-like rule to require mediation.

**TASK: Judge Davis will craft non-mandatory/aspiration-like language to require mediation.**

**b. Workgroup 5: Disclosure and Discovery (Judge Nelson, Chair)**

Janet Metcalf reported for Judge Nelson. The discussion centered on the 26.1 disclosure statement. At the recommendation of the Committee, the workgroup adopted Judge Davis' simplified disclosure statement.

Valerie Sheedy had a concern about the statement regarding when the parties get prompt disclosure of witnesses and their substance of testimony, and how the rules address late disclosures.

Judge Armstrong stated that he thought in a previous meeting the Committee had decided to ask for a disclosure of witnesses. He said that it is helpful for everyone to know who the other side's witnesses are proposed to be. He said it is true there are other means of discovery, but he also recommended adding it here automatically. Judge Davis agreed, but thought it should be done with teeth in it. Discussion ensued, with the decision of the majority that Valerie and Janet will draft a rule to require disclosure of witnesses.

**TASK: Janet and Valerie will add 37(c) back into the document and revise as appropriate for family law rules.**

There was a discussion regarding the time frame for disclosure of witnesses. Judge Armstrong proposed no later than 90 days after filing a response.

Janet Sell stated that at the last meeting she attended, there was a consensus that there would be an exception to the normal disclosure rule for the IV-D program, because Rule 26.1 does not work well for the State; she said she would like this exception written into the rule. Judge Davis said that the workgroup found that there was not much reason to exempt the State. Janet said that the State does not get the information that would be needed, and wondered what information the Committee thinks they will get that would be useful to the parties. Judge Davis said that the State has access to information that others do not have, such as tax information and W2's. He said that he does not think that it is a fair system that the State is not required to give any information to the other party. Janet Sell voiced concerns about the State not being in a position to produce a party's information. Janet reminded the Committee that the State does not represent the parties themselves; she stated that the State's job is to get fair and equitable orders for the children involved in these cases. Janet said they cannot subpoena W2's. She also stated that many of these people are not cooperative with the State. The one thing the State does have is unemployment insurance information; however, they cannot disclose it or use it as an exhibit. They can confront the respondent with it, but do not use it if the respondent shows up with pay stubs, which sometimes include overtime.

Discussion ensued. Judge Armstrong asked Janet to go back to the Attorney General's office and ask if there would be any objection requiring that they disclose that information which is in their possession.

**TASK: Janet will ask the Attorney General's office what the state can provide.**

**3. Break for lunch**

**4. Reports from Workgroups (Continued)**

**b. Workgroup 5: Disclosure and Discovery (Continued) (Judge Nelson, Chair)**

Janet Metcalf continued with her report regarding Interrogatories, Forms Section: #9 (page 168). She said that she and Konnie changed the standard Child Custody Interrogatories based on the group's consensus at the last meeting. The following changes were made:

1. Subsection B and C: incorporated the Committee's suggestions.
2. Subsection C: broke down the decision-making issues, and added, "How do you want to share parenting time?"
3. Struck out section that asks for automatic disclosure of psychological and psychiatric records.
4. Struck language on pages 173 and 174 – "Consider complete elimination of this interrogatory as disclosure will handle this."
5. Rule 27(b): added language, "unless already disclosed pursuant to Rule 26.1, list each witness you intend to call at the trial of this case."
6. Rule 28 (a) (b): added language, "Please complete AND EXCHANGE the attached."
7. Rule 28: added new paragraph (c), "These requirements do not apply if you have exchanged an affidavit or inventory within the last six months unless there has been a change in circumstances."
8. Page 168, #9 (c) (2): added language, "Psychological/PSYCHIATRIC."
9. Changed language in paragraph #9F: "List each and every opinion and fact supporting your position as stated in your resolution statement and interrogatory #9."
10. #9(d) and (e): added language, "If yes, please explain," or "What, if any concerns."
11. #9(d) added Subsection (1): "What are the special needs?"

**c. Workgroup 7: Pretrial and Trial Procedures (Judge Nielson, Chair)**

Judge Warner and Valerie reviewed Rules 16, and 38 through 53, to determine which were applicable to family law. The following changes were made

1. Rule 38 (a): after "set at a Case Resolution Conference," added language, "otherwise on court's own motion."
2. Rule 38(4): after "because custody" added language: "is an issue."
3. Deleted Rule 40.
4. Deleted Rule 43(i).
5. Deleted Rule 43 (k).
6. Deleted Rule 44 (a) and (c).
7. Rule 52 (a): after "if requested before trial" added language: "or if required by law."
8. Rule 52 (b): deleted reference to "jury."
9. Deleted Rule 52 (c).

10. Page 105, Rule \_\_\_\_ (a) (10) added language: “The court may set a pretrial conference at its discretion.” Deleted language: “or will be completed.”

Annette Everlove asked whether when the parties need to specify if they will be presenting evidence. Judge Armstrong asked Annette to work on language for this issue.

**TASK: Annette Everlove will work on language to incorporate into Section III, beginning on page 32. The new language will address this issue and will be something to the effect of the following: “The parties will specify, and the court will set it on the calendar as either an evidentiary hearing or not an evidentiary hearing/oral argument.”**

There was a question regarding whether or not to incorporate e-courtrooms. Judge Armstrong asked Konnie to add Michael Jeanes to the October agenda to update the Committee on the Keeping the Record Committee’s progress.

**TASK: Konnie will add Michael Jeanes to the agenda for October so that he may update the Committee on the progress of the Keeping the Record Committee, vis-à-vis e-courtrooms and whether or not we need to factor that into the ARFLP.**

#### **d. Workgroup 10: Sanctions and Contempt (Judge Nelson, Chair)**

Janet Metcalf reviewed the new rule on page 145: “Contempt and Sanctions for Non-Compliance with a Court Order.” Janet stated that this is a general contempt rule, which was largely taken from a Texas family court rule for contempt for not paying child support. All of the substantive case law was left in place, and they tried to stay away from statutory reference. There is an “Order and Sanctions” section, as well as a “Purge” section.

Judge Armstrong said it was possible to have sanctions other than contempt. He also said there can be sanctions for violating rules without it being contempt. He asked Janet to breakout a section for sanctions other than contempt. Judge Armstrong also questioned listing incarcerations generally. He said you can only incarcerate in criminal contempt.

He also stated that some people would look at this rule and think that they could request incarceration or that judges can grant incarceration. He suggested adding in (f), “The court shall review at least every 30 days.”

Richard said the last sentence in (e) needed to be changed. He said that some counties use *pro-tems* on weekends who can only review or make decisions on certain issues. Judge Armstrong asked Janet to change the language to: “Upon incarceration, the contemnor must be brought before the court within 24 hours of arrest.”

It was also requested that purge v. bond should be clarified in the rules. Some people believe that when putting up money for a bond, that money will be returned to them. Judge Armstrong said the law states that the correct terminology under the law for contempt follows: a “purge amount” is set, and for a child support arrest warrant, a “release amount” is set. He said it is really a training issue and that no one should use the word “bond” in these proceedings.

Janet Metcalf said this is a confusing issue for her and asked that the members review this issue carefully. Konnie stated that Brooke Sams, who is on Workgroup #9, Post-Judgment Proceedings, has read Janet's rule, and wondered if the Child Support Arrest Warrant segment Brooke had drafted should be moved to the Contempt section. Judge Armstrong asked Janet Metcalf to take a look at this. Janet Sell stated she was also interested in this.

**TASK: Janet Metcalf and Janet Sell will review Brooke Sams' proposed Child Support Arrest Warrant Rule to see if it can be incorporated into the Sanctions and Contempt Section.**

**e. Workgroup 11: Forms (Bridget Humphrey, Chair)**

Bridget stated that there were no substantive changes made by the Forms Workgroup. She said that a philosophical decision needed to be made. She said the *ARFLP* calls for additional forms, and the Committee had talked about keeping the forms to a minimum. However, there seem to be some forms that cannot be found anywhere. Bridget said decisions needed to be made in the following areas:

1. New procedures – such as, in the temporary orders whereby we are going to set forth a plan for automatic entry of child support orders to be revised at time of trial. Will we want to include those forms in the *ARFLP*?
2. Regarding forms that are lacking (Disclosure Statement, Pretrial Statement, and Inventory of Property and Debt forms); Pima County has “inventory” available on-line. No one has a disclosure statement. She said if we do not put these in our set of rules, we are ordering *pro pers* to comply without giving them a mechanism to do so. She thinks that at least a Pretrial Statement form should be included if we are going to have a Resolution Statement and the *pro per* litigants will need to do Pretrial Statements, whereas they may not need to do Disclosure Statements.

Bridget asked for input from the members. Judge Armstrong recommended that we would have forms online and we could direct people to a web site (probably the Supreme Court's web site). Everyone has access to the Internet now. He suggested fillable forms that would allow people to type in information (as opposed to Turbo forms). Judge Armstrong stated that there needed to be as many forms on-line as possible, and as few as possible in the *ARFLP*.

Judge Armstrong asked Theresa Barrett to research the appropriate people with whom the Committee needs to coordinate at the Supreme Court to make this happen.

**TASK: Theresa will research who in the Supreme Court can work with the Committee regarding on-line “smart” forms.**

**5. Next Meeting**

The next Committee meeting will be held on **Friday, October 1, 2004**, at the Arizona Courts Building, 1501 W. Washington, Conference Room 119, Phoenix, Arizona. The conference call number for that meeting is **602.542.9006**.

**6. Adjournment**

Judge Armstrong adjourned the meeting at 2:45 p.m.